

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EZEADIGO ODUCHE,	§
	§ No. 70, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0610002513
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 1, 2009
Decided: April 14, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 14th day of April 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Ezeadigo Oduche, filed an appeal from the Superior Court's January 22, 2009 order, which adopted the Superior Court commissioner's August 28, 2008 report recommending that the Superior Court deny Oduche's motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground

¹ Super. Ct. Crim. R. 62; Del. Code Ann. tit. 10, § 512(b).

that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In October 2006, Oduche was arrested on charges of, among other things, Rape in the First Degree and Kidnapping in the First Degree. On February 20, 2007, Oduche, assisted by counsel, pleaded guilty solely to the lesser-included offense of Rape in the Fourth Degree. The State dismissed the remaining charges. Had Oduche gone to trial on those charges and been convicted, he faced a minimum mandatory sentence significantly in excess of 15 years at Level V and as much as a life sentence. On the fourth degree rape conviction, Oduche was sentenced to 15 years incarceration at Level V, to be suspended for time served, to be followed by 6 months at Level IV home confinement, 18 months at Level III probation, and registration as a Tier II sex offender. Oduche did not file a direct appeal of his conviction and sentence.

(3) In this appeal, Oduche claims that a) his counsel provided ineffective assistance by not advising him of the collateral consequences of a guilty plea; b) his guilty plea was involuntary; and c) his counsel provided ineffective assistance by failing to request a suppression hearing. Oduche also claims that the Superior Court abused its discretion by issuing an order

² Supr. Ct. R. 25(a).

on his postconviction motion that fails to provide an adequate basis for appellate review.

(4) Oduche's first claim that his counsel failed to advise him of the collateral consequences of a guilty plea is refuted by the record. Oduche's counsel attests in her affidavit filed in the Superior Court that she informed Oduche about his risk of deportation, which is confirmed by Oduche's signed TIS guilty plea form. As such, we conclude that Oduche's first claim is without merit.

(5) Oduche's second claim that his guilty plea was involuntary also is refuted by the record. The hearing transcript reflects that Oduche confirmed that he understood the charge to which he was pleading guilty, that he had conferred with his attorney about his plea and had no complaints about her representation, and that no one had threatened him or forced him to enter the plea. In the absence of clear and convincing evidence to the contrary, Oduche is bound by those representations.³ Moreover, Oduche has presented no evidence that, but for error on the part of his counsel, he would not have pleaded guilty and would have insisted on proceeding to trial.⁴ To the contrary, he received a clear benefit by pleading guilty. As such, we conclude that Oduche's second claim also is without merit.

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

(6) Oduche's third claim is that his counsel provided ineffective assistance by failing to request a suppression hearing. Because a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea,⁵ Oduche's third claim also fails.

(7) Finally, there is no merit to Oduche's argument that the Superior Court's order failed to provide an adequate basis for appellate review. It is within the Superior Court's discretion to refer postconviction motions to the Superior Court commissioner for a report and recommendation and, following a *de novo* review, to adopt the findings and conclusions of the commissioner.⁶ There is no evidence that the Superior Court abused its discretion in this regard.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁵ *Downer v. State*, 543 A.2d 309, 311-12 (Del. 1988).

⁶ Super. Ct. Crim. R. 62(a) (5) (iv).

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice